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B *DAC*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Lawrence A. Shimp et al.
PATENT NO.: 6,855,167
SERIAL NO. : 10/005,238 ATTORNEY DOCKET :525400-208
FILED : December 5, 2001
FOR Spinal Intervertebral Implant, Interconnections for
Such Implant and Processes for Making

PETITION TO ADJUST TERM OF PATENT TERM EXTENSION

MS Patent Ext.
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

Sir:

This Petition is filed within two months of the Issue Notice, and the issuance of the above noted corresponding patent as required by 37 CFR1.705(c)(1). Applicants are in receipt of a Notice of Allowance dated July 27, 2004, a copy of the portion with the patent term extension of 120 days enclosed. Applicants are in receipt of an Issue Notice dated January 26, 2005, copy enclosed, indicating that the patent term extension is reduced to 36 days, as noted on the resulting issued patent. Applicants petition this reduction in patent term as error by the Patent Office and request that the term of 120 days as noted in the enclosed Notice of Allowance be restored and, in addition, include any additional delay due to the error in PTO action in regard to the drawings as explained below.

Enclosed is a copy of applicants' PAIR statement of the history of the patent term adjustment. It shows a reduction of 84 days in the period subsequent to the Notice of Allowance. This 84 day reduction is apparently due to the filing of a Letter to the Official Draftsperson in November 2004 enclosing formal drawings. The Patent Term history shows that the 84 day reduction in term was assigned on November 24, 2004 as a result of the filed drawings.

Enclosed is a Notice Regarding Drawings dated November 15, 2004. It states that the drawings received by the US PTO on 12/5/2001 are not acceptable. It also states that failure of applicants to respond to this Notice would result in abandonment of the application. That Notice of defective drawings, which relates to the informal drawings filed with the application, is in error. Applicants filed formal drawings on October 9, 2002, which were accepted by the Examiner per the enclosed Office Action dated October 9, 2003.

The Patent Office lost the filed formal drawings. It first discovered this loss about November 15, 2004. As a result, applicants were required to reply to the Notice Regarding Drawings and submitted a new set of formal drawings in a letter mailed November 22, 2004, copy enclosed.

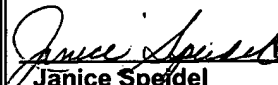
The delay incurred by the filing of the formal drawings with the letter mailed November 22, 2004, was not applicants' delay, but that of the Patent Office. Therefore, if there is to be any adjustment, there should be an adjustment in the other direction, an additional period due to the PTO error, and not a reduction.

Further, it is not understood the reason for the 84 day delay. The actual delay was minimal based on the patent term history per the enclosed and the enclosed Notice Regarding the Drawing, which was mailed on Nov. 15, 2004. Applicants immediately responded to this Notice so that there was in fact no such 84 day delay. The patent term history from the PTO records shows that the drawings were finished by the PTO on Nov. 24, 2004. As shown on the enclosed, the drawings were mailed on November 22, 2004, seven days after mailing of the Notice. There in fact was no 84 day delay, which appears arbitrary. This 84 delay value appears to be error and does not appear to have any correspondence to an actual delay, which delay, in any case, is irrelevant due to PTO error.

It is respectfully requested that the period of at least the 120 days of patent term adjustment as set forth in the Notice of Allowance be restored in addition to any further delay resulting from the PTO error in losing the drawings.

The Commissioner is authorized to charge the \$400 fee for this paper to deposit account 03-0678 and to charge any additional fee that might be due for this paper or credit any overpayment to deposit account 03-0678.

It is believed that since the error and delay resulting in the term reduction is that of the Patent Office, no fee should be incurred by applicants for this petition.

FIRST CLASS CERTIFICATE	
I hereby certify that this correspondence is being deposited on the date set forth below with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:	
MS Patent Ext. Commissioner for Patents Box 1450 Alexandria, VA 2213-1450	
 Janice Speidel	<u>February 24, 2005</u> Date

#156412

Respectfully submitted,
Lawrence A. Shimp et al.


By William Squire, Reg. No. 25,378
Attorney for Applicants

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Five Becker Farm Road
Roseland, NJ 07068

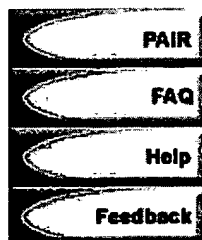
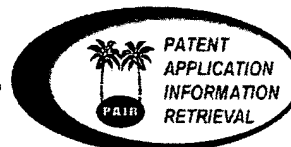
Tel. No.: (973) 994-1700
Fax No. : (973) 994-1744



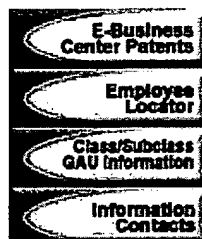
United States Patent and Trademark Office

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PATENT APPLICATION INFORMATION RETRIEVAL



Other Links



Printer Friendly Version

Patent Term Adjustment (PTA) for application number: 10/005,238			
			Days
Filing or 371(c) Date:	12-05-2001	USPTO Delay (PTO):	127
Issue Date of Patent:	02-15-2005	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	91
Post-Issue Petitions (days):	+0	Total PTA:	36
USPTO Adjustment (days):	+0	Explanation of Calculations	

Select Search Option

Assignments

Continuity Data

File History

Image File Wrapper

Maintenance Fees - Retrieve fees to pay

Maintenance Fees - View payment windows

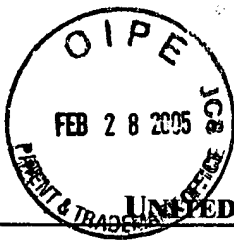
Search

Maintenance Fees Available: Mon-Fri 5:30 AM to Midnight, Sat-Sun-Hol. 7:30 AM to 8:00 PM E.T.

Patent Term Adjustment History			
Date	Contents Description	PTO (days)	APPL (days)
01-26-2005	PTA 36 Months	↑	
02-15-2005	Patent Issue Date Used in PTA Calculation	↑	
01-21-2005	Receipt into Pubs	↑	
01-20-2005	Dispatch to FDC	↑	
01-20-2005	Application Is Considered Ready for Issue	↑	
11-24-2004	Workflow - Drawings Finished	↑	84
10-26-2004	Mailroom Date of Issue Fee Payment	↑	↑
01-19-2005	Correspondence Address Change	↑	↑
01-18-2005	Receipt into Pubs	↑	↑
11-30-2004	Workflow - Query Request - Finish	↑	↑
11-08-2004	Workflow - Query Request - Begin	↑	↑
10-26-2004	Issue Fee Payment Recorded	↑	↑
08-18-2004	Receipt into Pubs	↑	↑
08-06-2004	Workflow - File Sent to Contractor	↑	↑
07-27-2004	Mail Notice of Allowance	↑	↑
07-26-2004	Notice of Allowance Data Verification Completed	↑	↑
07-22-2004	Notice of Allowability	↑	↑

07-16-2004	Mail Advisory Action (PTOL - 303)	↑	↑
07-15-2004	Advisory Action (PTOL-303)	↑	↑
07-14-2004	Date Forwarded to Examiner	↑	↑
07-01-2004	Amendment after Final Rejection	↑	7
07-01-2004	Request for Extension of Time - Granted	↑	↑
07-01-2004	Workflow incoming amendment IFW	↑	↑
06-30-2004	IFW TSS Processing by Tech Center Complete	↑	↑
06-30-2004	Date Forwarded to Examiner	↑	↑
05-20-2004	Amendment after Final Rejection	↑	↑
06-23-2004	Mail Advisory Action (PTOL - 303)	↑	↑
06-22-2004	Advisory Action (PTOL-303)	↑	↑
05-20-2004	Workflow incoming amendment IFW	↑	↑
04-23-2004	Mail Examiner Interview Summary (PTOL - 413)	↑	↑
04-22-2004	Examiner Interview Summary Record (PTOL - 413)	↑	↑
03-24-2004	Mail Final Rejection (PTOL - 326)	↑	↑
03-22-2004	Final Rejection	↑	
01-14-2004	Date Forwarded to Examiner	↑	
01-08-2004	Response after Non-Final Action	↑	
12-05-2003	Information Disclosure Statement (IDS) Filed	↑	
10-09-2003	Mail Non-Final Rejection	↑	
10-01-2003	Non-Final Rejection	↑	
07-22-2003	Date Forwarded to Examiner	↑	
07-16-2003	Response to Election / Restriction Filed	↑	
06-12-2003	Mail Restriction Requirement	127	
06-11-2003	Requirement for Restriction / Election	↑	
04-30-2003	Case Docketed to Examiner in GAU	↑	
10-09-2002	Incoming Letter Pertaining to the Drawings	↑	
12-05-2001	Preliminary Amendment	↑	
12-05-2001	Information Disclosure Statement (IDS) Filed	↑	
02-01-2002	Case Docketed to Examiner in GAU	↑	
01-15-2002	Application Dispatched from OIPE	↑	
01-07-2002	Application Is Now Complete	↑	
12-17-2001	IFW Scan & PACR Auto Security Review	↑	
12-05-2001	Initial Exam Team nn	↑	

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NUMBER 10/005238	FILING/RECEIPT DATE 12/05/2001	FIRST NAMES APPLICANT SHIMP, LAWRENCE A.	ATTORNEY DOCKET NUMBER 525400-208
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William Squire, Esq.
c/o Carella, Byrne, Bain, Gilfillan, Cecchi,
Stewart & Olstein
6 Becker Farm Road
Roseland NJ 07068

Examiner
WILLSE, DAVID

Art Unit
3738

Paper Number

Date Mailed: 11-15-04

Notice Regarding Drawings

Corrected drawings for the above-identified application, received in the USPTO on 12/05/2001 are still not acceptable for the reason(s) identified on the attached PTO-948. Applicant is given one opportunity to correct the informalities within a two-month time period from the mailing date of this Notice. **THIS TIME PERIOD IS NOT EXTENDABLE UNDER EITHER 37 CFR 1.136(a) OR 1.136(b). Failure to take corrective action within the set period will result in abandonment of the application.**

ATTACHMENT: PTO-948 Notice of Draftsperson's Patent Review

Manjary

RETURN CORRECTED DRAWINGS TO:
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

11/19/04

DATE RECEIVED:	<u>11-19-04</u>
DATES ENTERED:	<u>2 No. 0 A</u>
1)	<u>Corrected drawing</u>
2)	<u>due 1-15-05</u>
3)	<u>NO EXTENSIONS</u>
4)	
5)	
6)	
DOCKETED BY:	<u>PM</u>
DATE:	<u>11-19</u>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



APPLICANT : Lawrence A. Shimp et al.
SERIAL NO. : 10/005,238 ATTORNEY DOCKET : 25400-208
FILED : December 5, 2001
TITLE : Spinal Intervertebral Implant, Interconnections for
Such Implant and Processes for Making
EXAMINER : David Willse ART UNIT: 3738

LETTER TO OFFICIAL DRAFTSPERSON

US Issue Fee
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

Re:

Applicants are in receipt of a Notice Regarding the Drawings stating that no corrections to the drawings filed on December 5, 2001 were received by the PTO. This appears to be an error. The PTO lost the formal drawings that were filed subsequently on October 9, 2002.


The Patent Office received the drawings as evidenced by the enclosed post card receipt showing that 21 sheets of formal drawing were received on October 9, 2001. Further evidence that the drawings were not only received, but accepted, is shown by the enclosed copy of the Notice of Allowability accompanying the Notice of Allowance dated July 27, 2004 and signed by the Examiner Mr. Willse.

Enclosed is a copy of the previously filed Letter to the Official Draftsperson with a certificate of mailing dated October 4, 2003. Obviously the Patent Office has misplaced the previously filed formal drawings.

BEST AVAILABLE COPY

BEST AVAILABLE COPY

Enclosed are copies of the twenty-one (21) sheets of formal drawing previously submitted and accepted by the PTO. Approval of the enclosed drawing should be given as these are the same as previously filed and are submitted for the convenience of the Patent Office in view of the fact it has misplaced the prior filed drawings.

FIRST CLASS CERTIFICATE	
I hereby certify that this correspondence is being deposited on the date set forth below with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:	
MS Issue Fee Commissioner for Patents Box 1450 Alexandria, VA 2213-1450	
 Janice Speidel	November 22, 2004 Date

#156412

Respectfully submitted,
Lawrence A. Shimp et al.

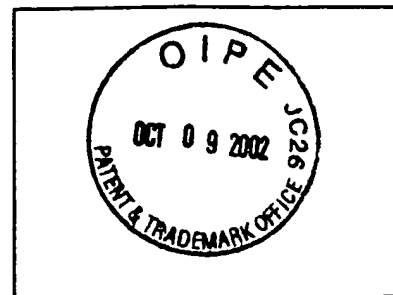

By William Squire
Reg. No. 25,378
Attorney for Applicant
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Fax No. : (973) 994-1744
Email: wsquire@carellabyrne.com

Please date stamp and return to addressee on reverse side

Applicant(s): LAWRENCE A. SHIMP ET AL.

Serial No.: 10/005,238 Filed: DEC. 5, 2001

Title (or mark): SPINAL INTERVERTERAL IMPLANT, INTERCONNECTORS
FOR SUCH IMPLANT AND PROCESSES FOR MAKING



DOCUMENTS ENCLOSED

☐ Application sheets: Descr.: _____
Drawing sheets: _____

Claims _____ Abstract _____
☐ Formal ☐ Informal

☐ Declaration (executed _____)

☐ Assignment to _____

☐ Verified Statement Claiming Small Entity Status

☐ Type of OA: _____

☐ Response to OA dated _____

☐ Inform. Discl. Statement

☐ _____ Mo. Ext. of Time

☒ LETTER TO OFFICIAL DRAFTSPERSON

☐ Other _____

☐ Check Amount \$ _____ No. _____

☒ Formal Drawing 21 sheets

Express Mail Label No.: _____

First class mail

Deposited on: _____

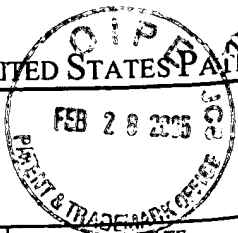
Certificate Dated: OCT. 4, 2002

Atty.: WS

Docket No.: 525400-208



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,238	12/05/2001	Lawrence A. Shimp	525400-208	8543
7590		07/27/2004		
William Squire, Esq. c/o Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein 6 Becker Farm Road Roseland, NJ 07068				
			EXAMINER	
			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 07/27/2004				

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 120 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 120 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

BEST AVAILABLE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	ISSUE DATE	PATENT NO.	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,238	02/15/2005	6855167	525400-208	8543

27162 7590 01/26/2005

CARELLA, BYRNE, BAIN, GILFILLAN, CECCHI,
STEWART & OLSTEIN
5 BECKER FARM ROAD
ROSELAND, NJ 07068

ISSUE NOTIFICATION

The projected patent number and issue date are specified above.

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment is 36 day(s). Any patent to issue from the above-identified application will include an indication of the adjustment on the front page.

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571) 272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

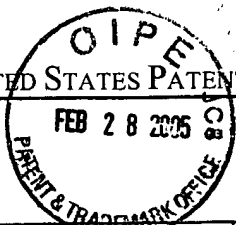
APPLICANT(s) (up to 18 names are included below, see PAIR WEB site <http://pair.uspto.gov> for additional applicants):

Lawrence A. Shimp, Morganville, NJ;
John M. Winterbottom, Jackson, NJ;
David R. Kaes, Toms River, NJ;
Todd M. Boyce, Aberdeen, NJ;
Erik O. Martz, Howell, NJ;

DATE RECEIVED:	F3105
DATES ENTERED:	
1)	8-21-2008
2)	8-21-2012
3)	8-21-2016
4)	
5)	
6)	
DOCKETED BY:	pm
DATE:	1-31



UNITED STATES PATENT AND TRADEMARK OFFICE



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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,238	12/05/2001	Lawrence A. Shimp	525400-208	8543

7590

10/09/2003

William Squire, Esq.
c/o Carella, Byrne, Bain, Gilfillan, Cecchi,
Stewart & Olstein
6 Becker Farm Road
Roseland, NJ 07068

EXAMINER

WILLSE, DAVID H

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

DATE RECEIVED:	10-10-03
DATES ENTERED:	3 Mo. 0A
1)	11-9-03 Reminder
2)	12-9-03 "
3)	1-9-04 Due Date
4)	2-9-04 1st Ext.
5)	3-9-04 2nd Ext.
6)	4-9-04 Final Deadline
DOCKETED BY:	pm
DATE:	10-14

10/27/03

Office Action Summary

Application No.

10/005,238

Examiner

Dave Willse

Applicant(s)

SHIMP ET AL.

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-138 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-14, 18-20, 22, 23, 25-29, 33, 60-63, 72, 73, 80, 86, 87, 114-116 and 127 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 9, 2002, is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- ☐ Interview Summary (PTO-413) Paper No(s) _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: